

COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech
Secretary of Natural Resources

David K. Paylor
Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TAVARES CONCRETE CO., INC.
FOR
TAVARES CONCRETE
Registration No. 73278**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Tavares Concrete Co. Inc., regarding Tavares Concrete Company Inc., for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable general permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the Tavares facility, located at 8000 Cinder Bed Road in Fairfax County, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
8. "NSPS OOO" means the Federal New Source Performance Standards for Nonmetallic Processing Plants located at 40 CFR Part 60, Subpart OOO.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "Permit" means a the Nonmetallic Mineral Processing General Permit to operate and construct a portable crusher and conveyor which was issued under the Virginia Air Pollution Control Law and the Regulations to Tavares Concrete Co, Inc. on March 19, 2004.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Tavares Concrete" or "Tavares" means Tavares Concrete Co., Inc., a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. Tavares Concrete is a "person" within the meaning of Va. Code § 10.1-1300.
13. "Va. Code" means the Code of Virginia (1950), as amended.
14. "VAC" means the Virginia Administrative Code.
15. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.
16. "VEE" means a Visible Emissions Evaluation, as determined by EPA Method 9 (*see* 40 CFR 60, Appendix A).

SECTION C: Findings of Fact and Conclusions of Law

1. Tavares Concrete owns and operates the Facility in Fairfax County. The Facility is a nonmetallic mineral processing operation.
2. Tavares Concrete is the subject of the Permit which allows them to operate a Komatsu BR550JG-1 crusher
3. On January 21, 2009, DEQ received a notification of relocation request from Tavares Concrete, stating that the crusher permitted under registration number 73278 would be relocating to Chantilly Crushed Stone at the Chantilly Quarry in Chantilly Virginia on January 26, 2009.

4. DEQ staff went to Chantilly Crushed Stone on June 4, 2009, to conduct a full compliance inspection of the permitted crusher; however, DEQ was unable to locate the crusher at this location.
5. Based on the aforementioned observations and a file review conducted by DEQ staff, DEQ issued a Notice Of Violation to Tavares Concrete on June 24, 2009, citing the following violations
 - Failure to furnish written notification to the department of the actual date of relocation of an emission unit, within 30 days, as required under 9 VAC 5-510-230.D.
 - Failure to perform VEEs for initial compliance determination for the Komatsu BR 550JG crusher within 180 days of startup as required by 9 VAC 5-50-20 and 40 CFR 60.672(b).
6. On August 10, 2009, DEQ staff met with representatives of Tavares Concrete to discuss the aforementioned violations.
7. Tavares Concrete submitted a notification of relocation request to DEQ on August 6, 2009, and a VEE testing protocol on August 11, 2009. In addition, Tavares Concrete submitted a letter on August 17, 2009, notifying DEQ that the VEE testing had been scheduled for August 21, 2009. The VEE testing was conducted on August 21, 2009.
8. DEQ staff conducted a full compliance evaluation at Tavares Concrete, Inc on August 21, 2009. DEQ staff noted that the facility had an Extex Screen which appeared to be subject to NSPS, Subpart OOO. DEQ staff conducted an additional file review and determined that Tavares did not obtain the required permit to construct and operate for this equipment.
9. Based on the aforementioned observations and the file review conducted by DEQ staff, DEQ issued a NOV to Tavares on September 9, 2009, for failing to obtain the required permit for construction and operation of the Extex Screen.
10. Tavares submitted a permit application to DEQ-NRO on October 1, 2009 for the Extex Screen. The Permit for the triple deck screen was issued to Tavares on February 2, 2010.
11. Based on the information obtained at the August 10, 2009, meeting, and the August 21, 2009, inspection, the Board concludes that Tavares Concrete has violated 9 VAC 5-510-230.D, 9 VAC 5-50-20, and 9 VAC 5-80-1120A, 9 VAC 5-80-1210 D, and 9 VAC 5-50-50.A as described above.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Tavares Concrete, and Tavares Concrete agrees to pay a civil charge of \$12,803..60, within 30 days of the effective date of the Order, in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Tavares Concrete shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Tavares Concrete for good cause shown by Tavares Concrete, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Tavares Concrete admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Tavares Concrete consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Tavares Concrete declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Tavares Concrete to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Tavares Concrete shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts

of God, war, strike, or such other occurrence. Tavares Concrete shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Tavares Concrete shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Tavares Concrete intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Tavares Concrete. Nevertheless, Tavares Concrete agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. Tavares Concrete petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - b. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Tavares Concrete.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Tavares Concrete from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Tavares Concrete and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.

13. The undersigned representative of Tavares Concrete certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Tavares Concrete to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Tavares Concrete.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Tavares Concrete voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 24th day of June, 2010.



Thomas A. Faha, NRO Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Consent Order
Tavares Concrete Co., Inc.
Page 7 of 7

Tavares Concrete, Co., Inc., voluntarily agrees to the issuance of this Order.

Date: 6/21/10 By: [Signature] PRESIDENT
(Person) (Title)

Commonwealth of Virginia

City/County of FAIRFAX

The foregoing document was signed and acknowledged before me this 21 day of JUNE,
2010, by ARMANDO J. TAVARES who is
PRESIDENT of Tavares Concrete Co., Inc., on behalf of the corporation.

[Signature]
Notary Public

124624
Registration No.

My commission expires: 06-30-13

Notary seal: